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# SENATE BILL No. 211

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 13-11-2; IC 13-31.

**Synopsis:** Carbon dioxide storage and transportation. Delineates the jurisdiction of the department of environmental management, the utility regulatory commission, and the department of natural resources with respect to various aspects of carbon dioxide transportation and storage.

**Effective:** July 1, 2010.

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January 5, 2010, read first time and referred to Committee on Energy and Environmental Affairs.

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Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

## SENATE BILL No. 211

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A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1       SECTION 1. IC 13-11-2-22.5 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2010]: **Sec. 22.5. "Carbon dioxide", for**  
4 **purposes of this chapter and IC 13-31, means a fluid consisting of**  
5 **more than ninety percent (90%) carbon dioxide molecules**  
6 **compressed to a super critical state.**  
7       SECTION 2. IC 13-11-2-33.5 IS ADDED TO THE INDIANA  
8 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
9 [EFFECTIVE JULY 1, 2010]: **Sec. 33.5. "Commercial operator", for**  
10 **purposes of this chapter and IC 13-31, means an entity that:**  
11       (1) **operates a storage facility or a transmission pipeline; and**  
12       (2) **provides storage facility services or transmission pipeline**  
13 **services on an open access, nondiscriminatory basis under the**  
14 **requirements and terms and conditions of service that the**  
15 **commission or another authorized regulatory body establishes**  
16 **by rule.**  
17       SECTION 3. IC 13-11-2-34 IS AMENDED TO READ AS



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FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 34. (a) "Commission", for purposes of IC 13-25-1 and IC 13-25-2, refers to the Indiana emergency response commission.

(b) "Commission", for purposes of IC 13-29-1, means the Midwest Interstate Low-Level Radioactive Waste Commission.

(c) "Commission", for purposes of IC 13-29-2-2 through IC 13-29-2-7, refers to the Ohio River Valley Water Sanitation Commission.

(d) "Commission", for purposes of IC 13-11-2-223.3 and IC 13-31, refers to the Indiana utility regulatory commission.

SECTION 4. IC 13-11-2-54 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 54. (a) "Director", for purposes of IC 13-27.5, refers to the director of the Indiana clean manufacturing technology and safe materials institute.

(b) "Director", for purposes of IC 13-11-2-170.5, IC 13-11-2-223.2, and IC 13-31, refers to:

(1) the director of the division of oil and gas of the department of natural resources; or

(2) a person to whom the director of the division of oil and gas of the department of natural resources has delegated authority or duties under IC 13-31.

SECTION 5. IC 13-11-2-86.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 86.5. (a) "Formation", for purposes of this chapter:

(1) means a succession of beds that:

(A) were created continuously and under the same generation conditions;

(B) consist of one (1) type of rock or of alternations of types of rock; and

(2) includes any:

(A) aquifer; or

(B) cavity or void and associated pore space, whether naturally or artificially created.

(b) The term does not include a succession of beds that consist of oil, natural gas, natural gas condensate, coal, coal bed methane, or other naturally occurring chemical elements or compounds that may be commercially produced.

SECTION 6. IC 13-11-2-170.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 170.5. "Private operator", for purposes of IC 13-31, means an entity that is not a commercial

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operator and, pursuant to director authorization, operates a storage facility or transmission pipeline for the purpose of providing dedicated storage facility services or transmission pipeline services:

- (1) solely for itself; or
- (2) for not more than three (3) other entities.

SECTION 7. IC 13-11-2-188.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 188.5. (a) "Reservoir", for purposes of sections 223 and 223.2 of this chapter, means any of the following that is suitable for or capable of being made suitable for the injection of carbon dioxide and storage:**

- (1) A sedimentary stratum.**
- (2) A formation, including a saline formation.**
- (3) An aquifer.**
- (4) A subsurface cavity or void, whether natural or artificially created.**
- (b) The term includes the following:**
  - (1) The location of a deposit of oil, natural gas, or natural gas condensate.**
  - (2) A coal seam.**

SECTION 8. IC 13-11-2-195.5, AS ADDED BY P.L.235-2005, SECTION 129, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 195.5. "Safe Drinking Water Act", for purposes of this chapter and IC 13-18-21 and IC 13-31, refers to:**

- (1) 42 U.S.C. 300f et seq.; and
- (2) regulations adopted under 42 U.S.C. 300f et seq.

SECTION 9. IC 13-11-2-223 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 223. (a) "Storage", for purposes of environmental management laws and when used in connection with hazardous waste, means the containment of hazardous waste, either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste.**

- (b) "Storage", for purposes of IC 13-22-10, means:**
  - (1) the containment of hazardous waste requiring a permit under rules adopted under IC 13-22-2-4; or
  - (2) the containment of low level radioactive waste, either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the low level radioactive waste.
- (c) "Storage", for purposes of IC 13-22-12, includes:**
  - (1) interim status; and
  - (2) permitted;

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hazardous waste storage.

(d) "Storage", for purposes of IC 13-29-1, means the temporary holding of waste for treatment or disposal.

(e) "Storage", for purposes of sections 188.5, 223.2, and 237.8 of this chapter and IC 13-31, means placement of carbon dioxide in a reservoir.

SECTION 10. IC 13-11-2-223.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 223.2. (a) "Storage facility", for purposes of this chapter (other than section 269 of this chapter) and IC 13-31, means the following:**

(1) The reservoir, the underground equipment, and the pipelines internal to a carbon dioxide storage operation, including:

(A) injection and withdrawal equipment; and

(B) surface buildings and equipment used in the operation.

(2) Any necessary and reasonable:

(A) area buffer; and

(B) subsurface monitoring zones and monitoring wells; designated by the director to ensure the safe and efficient operation of the storage facility for storage and to protect against pollution, invasion, and escape or migration of carbon dioxide.

(b) The term does not include the following:

(1) Carbon capture equipment located at the generator of the carbon dioxide.

(2) Pipelines used to transport the carbon dioxide from one (1) or more capture facilities to the storage injection site or sites.

SECTION 11. IC 13-11-2-223.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 223.3. "Storage operator", for purposes of IC 13-31, means any entity authorized by:**

(1) the commission; or

(2) another authorized regulatory body; to operate a storage facility.

SECTION 12. IC 13-11-2-237.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 237.8. (a) "Transmission pipeline", for purposes of this chapter and IC 13-31, means a pipeline, compressors, meters, and associated equipment and appurtenances used for the purpose of transporting carbon dioxide, including carbon dioxide withdrawn from a storage**

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1 facility, in Indiana for storage in Indiana or in another state.

2 (b) The term does not include the following:

3 (1) Carbon capture equipment located at the generator of the  
4 carbon dioxide.

5 (2) Pipelines that are part of a storage facility.

6 SECTION 13. IC 13-31 IS ADDED TO THE INDIANA CODE AS  
7 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
8 2010]:

9 **ARTICLE 31. CARBON DIOXIDE STORAGE AND**  
10 **TRANSPORTATION**

11 **Chapter 1. Jurisdiction**

12 **Sec. 1. Except as provided in sections 2 and 3 of this chapter, the**  
13 **department has jurisdiction over all entities and property**  
14 **necessary to insure compliance with:**

15 (1) this title; and

16 (2) any rules adopted under this title.

17 **Sec. 2. The jurisdiction of the commission with respect to**  
18 **storage facilities and transmission pipelines is as follows:**

19 (1) Commercial operators in Indiana:

20 (A) are deemed to be public utilities providing public  
21 services; and

22 (B) are subject to the general power of the commission to  
23 regulate public utilities, as set forth in IC 8-1-2, except with  
24 respect to rates.

25 (2) The commission does not have the jurisdiction to establish  
26 the rates of a commercial operator or a private operator.

27 (3) Commercial operators in Indiana are subject to the  
28 general power of the commission with respect to terms and  
29 conditions of service as set forth in IC 8-1-2.

30 (4) A private operator is not subject to the power of the  
31 commission with respect to rates and terms and conditions of  
32 service for storage or for transportation of carbon dioxide.

33 (5) A public utility using the services of a commercial  
34 operator is entitled, through periodic rate adjustment  
35 mechanisms, to an opportunity to recover in its rates  
36 regulated by the commission the reasonable and prudent costs  
37 associated with a storage facility or transmission pipeline.

38 (6) The commission may prescribe, enforce, and implement  
39 safety standards for transmission pipelines subject to this  
40 article in accordance with IC 8-1-22.5 through the adoption  
41 of rules, except that no requirements adopted in the rules may  
42 be more stringent than comparable federal requirements.

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(7) The commission shall establish by rule the beginning point and ending point of a transmission pipeline.

**Sec. 3. The jurisdiction of the department of natural resources with respect to storage facilities is as follows:**

(1) A storage operator must receive a permit from the director before undertaking any exploratory drilling for development or operation of a storage facility.

(2) The director shall issue a permit under subdivision (1) if the director finds that the stored carbon dioxide is:

(A) likely to remain stored underground for a specified period;

(B) unlikely to endanger people, property, or natural resources;

(C) unlikely to interfere with useful or desirable activities; and

(D) subject to reasonable verification and monitoring over a period determined by the director.

(3) The requirements of IC 14-37 apply to wells drilled in conjunction with a storage facility, except that:

(A) the bonding requirements of IC 14-37 do not apply to wells drilled in conjunction with a storage facility;

(B) the director shall take actions the director deems necessary to consolidate the permitting and regulatory requirements of IC 13 and IC 14; and

(C) no well drilled in conjunction with a storage facility is subject to the statutory or regulatory programs for:

(i) spacing under IC 14-37-3-3; or

(ii) forced pooling pursuant to IC 14-37-9;

regardless of depth, well spacing, production of hydrocarbons, or any other factor.

**Sec. 4. Nothing in this article affects the jurisdiction of the department of natural resources under the Safe Drinking Water Act.**

**Sec. 5. (a) Except as provided in subsection (b), nothing in this article applies to:**

(1) the use of carbon dioxide as a part of or in conjunction with any enhanced recovery operation where the sole purpose of the project is enhanced recovery of oil, coal bed methane, or natural gas; or

(2) a natural gas storage operation certified by the Federal Energy Regulatory Commission or the commission.

**(b) The director may adopt rules to allow conversion of:**

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1 (1) an enhanced recovery operation referred to in subsection

2 (a)(1); or

3 (2) a natural gas storage operation referred to in subsection

4 (a)(2);

5 into a storage facility. Upon approval of the conversion, this article  
6 applies to the storage facility.

7 Sec. 6. Notwithstanding any other law, agencies of state  
8 government and political subdivisions may not regulate any facility  
9 or activity for the purpose of:

10 (1) transportation of carbon dioxide;

11 (2) storage;

12 (3) withdrawal of carbon dioxide from a storage facility; or

13 (4) production of carbon dioxide from a storage facility;

14 except as expressly authorized under this article.

15 Sec. 7. For purposes of this article, carbon dioxide is not  
16 considered a pollutant, a nuisance, a hazardous waste, or a  
17 deleterious substance.

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